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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 ERIC A. GOTHAN and TERREIA L.  
9 GOTHAN, husband and wife,

10 Plaintiffs,

11 v.

12 WORLD SAVINGS BANK, FSB, et al.,

13 Defendants.  
14

3:10-cv-66-RCJ-WGC

**ORDER**

15 This is a standard foreclosure case involving a single property. Defendants  
16 Countrywide Home Loans, Inc.; ReconTrust Company, N.A.; Countrywide Bank, N.A. (an  
17 entity having been merged into Bank of America, N.A.) and Bank of America, N.A. (collectively  
18 "Defendants") have filed a motion to dismiss all causes of action against them for failure to  
19 state a claim. (Mot. to Dismiss (#87)). For the following reasons, Defendants' motion to  
20 dismiss (#87) is granted.

21 **BACKGROUND**

22 **I. Facts<sup>1</sup>**  
23

24 <sup>1</sup> Defendants have requested judicial notice to be taken of attached copies of relevant  
25 publicly recorded documents. (See Reqs. for Judicial Notice (##16, 66)). The Court takes  
26 judicial notice of these public records. See *Disabled Rights Action Comm. v. Las Vegas*  
27 *Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (the court may take judicial notice of the  
28 records of state agencies and other undisputed matters of public record under Fed. R. Evid.  
201).

1 In April of 1990, Plaintiffs Eric and Terréia Gothan purchased real property located at  
2 1345 Sunflower Lane, Fernley, Nevada 89408 (the "Property"). (Grant Bargain and Sale Deed  
3 (#16-1) Ex. A). Plaintiffs borrowed money to purchase the Property, and then refinanced the  
4 Property several times between 1990 and 1999. (See Deeds of Trust and Promissory Notes  
5 (#16-1) Exs. C-F).

6 Plaintiffs again refinanced and encumbered the Property in May 2005 by executing a  
7 deed of trust in the amount of \$288,000.00 (the "First Deed of Trust"). (First Deed of Trust  
8 (#16-1) Ex. H). The lender listed on the First Deed of Trust was Sierra Pacific Mortgage  
9 Company, Inc. ("Sierra Pacific"), the trustee was listed as Greenhead Investments, Inc.  
10 ("Greenhead"), and Mortgage Electronic Registration System, Inc. ("MERS") was named as  
11 nominee and beneficiary. (*Id.*).

12 A second deed of trust was later executed by Plaintiffs in September 2005 to secure  
13 a home equity line of credit from Countrywide Bank, N.A. ("Countrywide") in a maximum  
14 amount of \$36,000.00 (the "Second Deed of Trust"). (Second Deed of Trust (#68-7) at 2-3).  
15 MERS was listed as the nominee and ReconTrust Company, N.A. ("ReconTrust") was listed  
16 as the trustee. (*Id.*).

17 In February 2006, Plaintiffs obtained a second home equity line of credit from  
18 Countrywide and again encumbered the Property in the amount of \$70,000.00, secured by a  
19 deed of trust (the "Third Deed of Trust"). (Third Deed of Trust (#16-1) Ex. J).

20 A final loan of \$115,000.00 was obtained from Countrywide on January 9, 2007, which  
21 was again secured by a deed of trust encumbering the Property (the "Fourth Deed of Trust").  
22 (Fourth Deed of Trust (#16-1) Ex. L).

23 By May 2009, Plaintiffs failed to make payments and defaulted under the First Deed of  
24 Trust with Sierra Pacific. (Notice of Default (#68-8) at 2-3). On May 8, 2009, MERS officially  
25 substituted ReconTrust as trustee, replacing Greenhead. (Substitution of Trustee (#68-9) at  
26 2). ReconTrust then filed a notice of default and election to sell under deed of trust on May  
27 8, 2009—the same day it was substituted as trustee. (*Id.*).

28 **II. The Complaint**

1 Plaintiffs filed their complaint on December 23, 2009 in the Third Judicial District Court  
 2 of the State of Nevada. (Compl. (#1)). The case was later removed to federal court on  
 3 February 1, 2011. (Petition for Removal (#1)). Plaintiffs' complaint included claims of: (1)  
 4 unfair lending practices in violation of NRS § 598D.100; (2) conspiracy to commit fraud and  
 5 conversion; (3) injunctive relief; (4) declaratory relief; (5) wrongful foreclosure; (6) fraud  
 6 through omission; (7) quiet title; (8) breach of the covenant of good faith; (9) tortious good  
 7 faith; (10) civil conspiracy; (11) RICO violations; (12) unjust enrichment; and (13) fraud in the  
 8 inducement. (Compl. (#1)). The complaint listed as defendants: World Savings Bank, FSB;  
 9 Golden West Savings Association Service Company; Sierra Pacific; Greenhead; MERS; First  
 10 American Title Company of Nevada; Countrywide Home Loans, Inc.; Service Link;  
 11 Countrywide Bank, N.A.; Bank of America, N.A.; ReconTrust Company, N.A.; and Cristina  
 12 Garcia.<sup>2</sup> (*Id.*).

13 On July 2, 2010, this case was transferred to the Judicial Panel of Multi-District  
 14 Litigation ("JPML"). (Transfer Order (#41)). An order was issued by Judge Teilborg, who  
 15 presided over the JPML on March 21, 2011, remanding the following claims to this Court:  
 16 violation of NRS § 598D.100 (count 1); injunctive relief (count 3); declaratory relief (count 4);  
 17 civil conspiracy (count 10), RICO claims (count 11), and unjust enrichment (count 12). (Order  
 18 for Remand (#61)).

19 On April 5, 2011, Defendants filed a motion to dismiss all claims that had been  
 20 remanded by the JPML. (See Mot. to Dismiss (#65)). In response to Defendants' motion to  
 21 dismiss, Plaintiffs offered to voluntarily dismiss the claims for civil conspiracy (count 10), RICO  
 22 violations (count 11), and unjust enrichment (count 12). (Opp'n to Mot. to Dismiss (#69) at 4;  
 23 Opp'n to Mot. to Dismiss (#88) at 2). Accordingly, the only remaining claims pending before  
 24 this Court are those for violations of NRS § 598D.100 (count 1); injunctive relief (count 3), and  
 25 declaratory relief (count 4).

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 27 <sup>2</sup> Defendants MERS, Sierra Pacific, Greenhead, and Wells Fargo were later dismissed  
 28 through stipulations approved by this Court. (Orders Granting Stipulations (##78, 79, 81)).

1 On May 7, 2011, Plaintiffs filed a motion for leave to file a first amended complaint, for  
 2 the purpose of "clarifying the causes of action [and] identifying the proper defendants." (Mot.  
 3 to Amend (#72) at 2). The first amended complaint stated the following claims: (1) debt  
 4 collection violations; (2) unfair and deceptive trade practices; (3) unfair lending practices; (4)  
 5 breach of the covenant of good faith; (5) wrongful foreclosure; (6) quiet title; (7) fraud through  
 6 inducement and omission; (8) slander of title; and (9) abuse of process. (Am. Compl. (#72-1)  
 7 at 33-65). Oral argument was heard on Plaintiffs' motion to amend and Defendants' motion  
 8 to dismiss on September 27, 2011. On October 7, 2011, this Court issued an order denying  
 9 Plaintiffs' motion to amend—finding that the JPML court must first address Plaintiffs' motion  
 10 to amend because the amended causes of action implicated MERS—and denying Defendants'  
 11 motion to dismiss pending the decision of the JPML court regarding Plaintiffs' motion to  
 12 amend. (Order (#84) at 4-5).

13 The JPML court issued an order on October 3, 2011 denying Plaintiffs leave to amend  
 14 their complaint. (Order (#87) Ex. A, at 18-19). Defendants then filed a renewed motion to  
 15 dismiss the remaining causes of action in Plaintiffs' original complaint. (Mot. to Dismiss (#87)).  
 16 As the JPML court has denied Plaintiffs leave to amend their complaint, the Court may now  
 17 properly address Defendants' motion to dismiss.

### 18 LEGAL STANDARD

19 The purpose of a Rule 12(b)(6) motion to dismiss for failure to state a claim is to test  
 20 the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
 21 "[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled  
 22 to offer evidence to support the claims." *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th  
 23 Cir. 1997) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

24 To avoid a Rule 12(b)(6) dismissal, a complaint must plead "enough facts to state a  
 25 claim to relief that is plausible on its face." *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017,  
 26 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim  
 27 is plausible on its face "when the plaintiff pleads factual content that allows the court to draw  
 28 the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*

1 *Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Although detailed factual allegations are  
 2 not required, the factual allegations “must be enough to raise a right to relief above the  
 3 speculative level.” *Twombly*, 550 U.S. at 555. All well-pleaded factual allegations will be  
 4 accepted as true and all reasonable inferences that may be drawn from the allegations must  
 5 be construed in the light most favorable to the nonmoving party. *Broam v. Bogan*, 320 F.3d  
 6 1023, 1028 (9th Cir. 2003).

7 If the court grants a motion to dismiss a complaint, it must then decide whether to grant  
 8 leave to amend. The court should freely give leave to amend when there is no “undue delay,  
 9 bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing  
 10 party by virtue of allowance of the amendment, [or] futility of amendment.” *Foman v. Davis*,  
 11 371 U.S. 178, 182 (1962); see also FED. R. CIV. P. 15(a). Generally, leave to amend is only  
 12 denied when it is clear that the deficiencies of the complaint cannot be cured by amendment.  
 13 *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

#### 14 DISCUSSION

15 The only remaining claims are those for violations of NRS § 598D.100 (count 1);  
 16 injunctive relief (count 3), and declaratory relief (count 4). (Opp’n to Mot. to Dismiss (#69) at  
 17 4; Opp’n to Mot. to Dismiss (#88) at 2). Plaintiffs’ claims for injunctive relief and declaratory  
 18 relief however are remedies and not independent causes of action. See *Stock W., Inc. v.*  
 19 *Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989); *In re Wal-*  
 20 *Mart Wage & Hour Emp’t Practices Litig.*, 490 F.Supp.2d 1091, 1130 (D. Nev. 2007); *Miller v.*  
 21 *MERSCORP, Inc.*, 2011 WL 6097751, at \*8 (D. Nev. 2011); *Anderson v. Deutsche Bank Nat’l*  
 22 *Trust Co.*, 2010 WL 4386958, at \*5 (D. Nev. 2010). Therefore, these claims are dependent  
 23 upon the only substantive claim before this Court: the claim for violations of NRS § 598D.100.

24 Plaintiffs allege Defendants engaged in unfair lending practices by luring Plaintiff into  
 25 obtaining the loans based solely on the future equity of the home in violation of NRS §  
 26 598D.100. (Compl. (#1) at 33-36). An action “upon a statute for a penalty or forfeiture” has  
 27 a two-year statute of limitations, unless the statute provides otherwise. NEV. REV. STAT. §  
 28 11.190(4)(b). The plain language of the statute indicates that it is a statute for a penalty and

1 does not contain its own limitations period, and consequently the statute of limitations period  
2 on this claim is two years. See NEV. REV. STAT. § 598D.110. The loan secured by the First  
3 Deed of Trust (the loan which is in default) was extended in 2005. (First Deed of Trust (#16-1)  
4 Ex. H). The final loan extended by Countrywide was taken out on January 9, 2007. (Fourth  
5 Deed of Trust (#16-1) Ex. L). Plaintiffs however did not file their complaint until December 23,  
6 2009. (See Compl. (#1)). As Plaintiffs failed to file their complaint within two years of the  
7 execution of the final loan, the statute of limitations has run on this claim and Plaintiffs have  
8 failed to state a claim for violations of NRS § 598D.100.

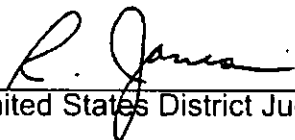
9 Accordingly, the Court grants Defendants' motion to dismiss (#87) the complaint in its  
10 entirety without leave to amend. Moreover, the Court *sua sponte* dismisses all claims against  
11 the remaining defendants without leave to amend because Plaintiffs fail to state a claim  
12 against them.

### 13 CONCLUSION

14 For the foregoing reasons, IT IS ORDERED that Defendants' motion to dismiss (#87)  
15 is granted and that the complaint be dismissed without leave to amend.

16 IT IS FURTHER ORDERED that the Court *sua sponte* dismisses the remaining  
17 defendants from this case without leave to amend.

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19 DATED: This 11th day of May, 2012.

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22 United States District Judge  
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